

Remarks

Claims 21, 48, 75, 102, 129, and 156 have been amended. Claims 26-31, 55-58, 82-85, 108-112, 136-139, and 163-166 have been canceled. Claims 21-25, 32-41, 43-46, 48-54, 59-68, 70-73, 75-81, 86-95, 97-100, 102-107, 113-122, 124-127, 129-135, 140-149, 151-154, 156-162, 167-176, 178-181 will be pending upon entry of these amendments. Applicants note that boxes 4 and 6 of the coversheet of the Final Office Action (Paper No. 17) and the first paragraph on page 2 fail to list pending claims 21-41 and 43-46.

The Amendments

The first paragraph of the specification has been amended to update the claim to priority due to the issuance of a patent on a priority application.

The Substitute Sequence Listing filed herewith corrects errors contained in SEQ ID NOS: 1 and 2. Compared with the previous Substitute Sequence Listing (filed November 13, 2002), the following changes have been made to SEQ ID NO:1 in the Substitute Sequence Listing filed herewith: (1) nucleotide T-351 has been deleted; (2) nucleotide G-920 has been changed to C-919; (3) nucleotide G-1104 has been changed to C-1103; (4) nucleotide A-1119 has been changed to G-1118; and (5) nucleotide C-1126 has been deleted. Also based on the November 13, 2002 substitute sequence listing, the following changes were made to SEQ ID NO:2: amino acid E-255 changed to D-255.

For the Examiner's convenience, alignments of SEQ ID NOS: 1 and 2 as listed in the various sequence listings filed in this case are provided as Exhibits A and B, respectively. Exhibit A contains an alignment of SEQ ID NO:1 from (1) the sequence listing as originally filed; (2) the July 10, 2000 substitute sequence listing; (3) the November 13, 2002 substitute sequence listing; (4) the substitute sequence listing filed concurrently herewith; and (5) the nucleotide sequence from Accession No. U39613, which was Exhibit C of the Rosen Declaration submitted with the July 10, 2000 Preliminary Amendment. Exhibit B is an alignment of SEQ ID NO:2 of the corresponding amino acid sequences.

The assertions made in the July 10, 2000 Rosen Declaration are, as before, correct. The presently submitted amendments to the sequence listing merely correct inadvertent clerical errors and bring the sequence listing into conformance with the correct sequences for SEQ ID NOS: 1 and 2 as described in said declaration.

The above amendments do not introduce any new matter.

Formal Matters

Applicants note that boxes 4 and 6 of the coversheet of the Final Office Action (Paper No. 17) and the first paragraph on page 2 fail to list pending claims 21-41 and 43-46. Applicants believe that upon entry of these amendments the correct list of pending claims is 21-25, 32-41, 43-46, 48-54, 59-68, 70-73, 75-81, 86-95, 97-100, 102-107, 113-122, 124-127, 129-135, 140-149, 151-154, 156-162, 167-176, 178-181.

The Final Office Action states that References AA and AB remain unconsidered and that the corresponding applications 09/913293 and 09/913292 list inventors other than Rosen et al. and do not describe biotechnological inventions. Applicants believe that correct (duplicate) copies of References AA and AB were submitted with Applicants' Reply filed November 13, 2002. However, for the Examiner's convenience, copies of References AA and AB are again provided herewith, together with Form PTO/SB/08 listing the references. The Examiner is invited to call the undersigned if any further questions arise regarding these references.

The Rejection of Claims 21, 30-41, 43-46, 48-68, 70-73, 75-95, 97-100, 102, 111-122, 124-127, 129-149, 151-154, 156-176, and 178-181 Under 35 U.S.C. 112, First Paragraph, for Enablement

Claims 21, 30-41, 43-46, 48-68, 70-73, 75-95, 97-100, 102, 111-122, 124-127, 129-149, 151-154, 156-176, and 178-181 remain rejected for alleged lack of enablement. While the Examiner admits that the specification is enabling for polynucleotides encoding ICE-LAP 3 and 4 of SEQ ID NOS:2 and 4 and for the deposited human cDNA clones, the Examiner states that the specification allegedly "does not reasonably provide enablement for nucleotides with e.g., 95% identity to the above or for fragments of these polypeptides that encode portions of the proteins having ICE-Lap 3 or 4 activity." Paper No. 17 at page 3, second paragraph. Applicants respectfully disagree and traverse.

As argued in the reply of November 13, 2002, Applicants maintain that the specification is enabling for percent identity variants and fragments with ICE-LAP 3 or 4 activity. Nevertheless, merely in order to further prosecution, Applicants have, without prejudice or disclaimer, amended the percent identity claims to no longer recite that the encoded polypeptide has ICE-LAP 3 or 4 activity but instead to recite that the encoded polypeptide induces apoptosis. This amendment is supported throughout the specification as originally filed.

Thus, Applicants assert that the claims as amended are fully enabled. Withdrawal of the rejection is respectfully requested.

The Double Patenting Rejection

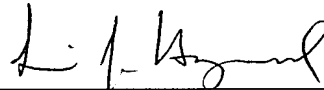
Claims 21-41, 43-46, 48-68, 70-73, 75-95, 97-100, 102-122, 124-126, 128-149, 151-154, 156-176, and 178-181 are provisionally rejected for alleged obviousness-type double patenting over claims 43, 44, and 46 of copending Application No. 08/334251, now U.S. Patent 6,538,121. Upon receiving notice of the allowability of the subject claims, Applicants will provide a terminal disclaimer over U.S. Patent 6,538,121, thereby rendering this rejection moot.

CONCLUSION

Applicants respectfully request that the above-made remarks be entered and made of record in the file history of the instant application. If there are any fees due in connection with the filing of this paper, please charge the fees to Deposit Account No. 08-3425.

Respectfully submitted,

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Enclosures